INDEX—DIGEST

ADMINISTRATIVE LAW

"Fair Rents" or "Forced Subsidies" Under Rent Regulation: Finding a Regulatory Taking Where Legal Fictions Collide 1293
Timothy L. Collins

ADMIRALTY LAW

American Dredging Co. v. Miller: Clouding the Waters of Maritime Litigation 1519
Thomas R. Anderson

ADVERSE POSSESSION

Real Property Actions and Proceedings Law Section 541—The Mind-Buster Busted 1485
Jason J. Legg

ARBITRATION

Creative Use of ADR: The Court-Appointed Special Settlement Master 881
Kenneth R. Feinberg

Arbitrability: Current Trends in the United States 905
Joseph T. McLaughlin

Are Mandatory, Binding Arbitration Requirements a Viable Solution for Employers Seeking to Avoid the Litigation of Statutory Employment Discrimination Claims? 991
Robert J. Lewton

BUSINESS DISPUTE RESOLUTION

Report on Cost-Effective Management of Corporate Litigation 263
The Corporate Counsel Section of the New York State Bar Association

Foreword 831
Hon. Harold R. Tyler, Jr.

Business Dispute Resolution—ADR & Beyond: An Opening Statement 835
Hon. Judith S. Kaye

Mainstreaming: Systematizing Corporate Use of ADR 847
Catherine Cronin-Harris

Creative Use of ADR: The Court-Appointed Special Settlement Master 881
Kenneth R. Feinberg

Whirlpool's Search for Efficient and Effective Dispute Resolutions ... 895
Robert T. Kenagy

Arbitrability: Current Trends in the United States 905
Joseph T. McLaughlin

The Rise and Fall of the Billable Hour 941
John A. Beach

Effective Representation of Corporate Clients in Mediation .. 951
Stephen P. Younger

Billing Reform Initiatives 963
Kenneth R. Feinberg

A View from the Front Lines 971
Joseph T. McLaughlin

. . . And Beyond: A Symposium Retrospective 977
Sandra M. Stevenson

Are Mandatory, Binding Arbitration Requirements a Viable Solution for Employers Seeking to Avoid the Litigation of Statutory Employment Discrimination Claims? 991
Robert J. Lewton

Strategic Negotiation in the Greater Chinese Economic Area: A New American Perspective 1035
Jeffrey C.Y. Li

CHILDREN AND THE LAW

Feasibility of Universally Testing Newborns for Hearing Loss 767
Rebecca A. Slezak

CIVIL PRACTIVE AND PROCEDURE

Plaintiff Bias in the CPLR 50-A/50-B Statutes 695
James Lambrinos
Oskar R. Harmon

CIVIL RIGHTS

Mixed-Motives, Title VII, and Removing Sexism from Employment: The Reality and the Rhetoric 1
Robert Brookins

School Desegregation and the First Amendment 213
David W. Burcham

Automated Fingerprint Identification Systems: Issues and Options Surrounding Their Use to Prevent Welfare Fraud ... 399
Jennifer K. Constance

Obscenity and the Internet: Does the Current Obscenity Standard Provide Individuals with the Proper Constitutional Safeguards? 711
Eric Handelman

Buckley, Imbler and Stare Decisis: The Present Predictment of Prosecutorial Immunity and an End to Its Absolute Means 1135
Douglas McNamara

CIVIL SERVICE

Public Sector Bargaining in New York: Examining PERB's Sunset Doctrine in a New Light 481
Richard E. Casagrande
Steven M. Klein
Stephanie S. Baxter

COMPUTER LAW

Obscenity and the Internet: Does the Current Obscenity Standard Provide Individuals with the Proper Constitutional Safeguards? 711
Eric Handelman

Tapping to the Beat of a Digital Drummer: Fine Tuning U.S. Copyright Law for Music Distribution on the Internet 789
Kenneth D. Suzan

Libel in Cyberspace: A Framework for Addressing Liability and Jurisdictional Issues in this New Frontier 1083
Cynthia L. Counts
C. Amanda Martin

CONSTITUTIONAL LAW

School Desegregation and the First Amendment 213
David W. Burcham

Automated Fingerprint Identification Systems: Issues and Options Surrounding Their Use to Prevent Welfare Fraud ... 399
Jennifer K. Constance

Combatting the Drunk Driver Menace: Conditioning the Use of Public Highways on Consent to Sobriety Checkpoint Seizures—The Constitutionality of a Model Consent Seizure Statute 601
Eustace T. Francis

Captain James T. Kirk and the Enterprise of Constitutional Interpretation: Some Modest Proposals from the Twenty-Third Century 673
Michael Stokes Paulsen

Obscenity and the Internet: Does the Current Obscenity Standard Provide Individuals with the Proper Constitutional Safeguards? 711
Eric Handelman

Buckley, Imbler and Stare Decisis: The Present Predictment of Prosecutorial Immunity and an End to Its Absolute Means 1135
Douglas McNamara

"Fair Rents" or "Forced Subsidies" Under Rent Regulation: Finding a Regulatory Taking Where Legal Fictions Collide 1293
Timothy L. Collins

Finishing What *Quill* Started: The Transactional Nexus Test for State Use Tax Collection 1449
Anna M. Hoti

CONTRACTS

Knowing Silence of Nonentrepreneurial Information Is Not Sporting 511
Susan Rogers Finneran

COPYRIGHT

Fluency of the Flesh: Perils of an Expanding Right of Publicity 741
Sudakshina Sen

Tapping to the Beat of a Digital Drummer: Fine Tuning U.S. Copyright Law for Music Distribution on the Internet 789
Kenneth D. Suzan

CORPORATE LAW

Misguided Statutory Construction to Cover the Corporate Universe: The Misappropriation Theory of Section 10(b) 139
Michael P. Kenny
Teresa D. Thebaut

Report on Cost-Effective Management of Corporate Litigation 263
The Corporate Counsel Section of the New York State Bar Association

Mainstreaming: Systematizing Corporate Use of ADR 847
Catherine Cronin-Harris

Whirlpool's Search for Efficient and Effective Dispute Resolutions ... 895
Robert T. Kenagy

Effective Representation of Corporate Clients in Mediation .. 951
Stephen P. Younger

COTENANCY

Real Property Actions and Proceedings Law Section 541—The Mind-Buster Busted 1485
Jason J. Legg

COURTS AND PROCEDURE

Plaintiff Bias in the CPLR 50-A/50-B Statutes 695
James Lambrinos
Oskar R. Harmon

Creative Use of ADR: The Court-Appointed Special Settlement Master 881
Kenneth R. Feinberg

Libel in Cyberspace: A Framework for Addressing Liability and Jurisdictional Issues in this New Frontier 1083
Cynthia L. Counts
C. Amanda Martin

Transnational Litigation and Personal Jurisdiction Over Foreign Defendants 1389
Sean K. Hornbeck

CRIMINAL LAW AND PROCEDURE

Automated Fingerprint Identification Systems: Issues and Options Surrounding Their Use to Prevent Welfare Fraud ... 399
Jennifer K. Constance

Combatting the Drunk Driver Menace: Conditioning the Use of Public Highways on Consent to Sobriety Checkpoint Seizures—The Constitutionality of a Model Consent Seizure Statute 601
Eustace T. Francis

Buckley, Imbler and Stare Decisis: The Present Predictment of Prosecutorial Immunity and an End to Its Absolute Means 1135
Douglas McNamara

DAMAGES

Plaintiff Bias in the CPLR 50-A/50-B Statutes 695
James Lambrinos
Oskar R. Harmon

EDUCATION LAW

School Desegregation and the First Amendment 213
David W. Burcham

EMPLOYMENT LAW

Mixed-Motives, Title VII, and Removing Sexism from Employment: The Reality and the Rhetoric 1
Robert Brookins

Public Sector Bargaining in New York: Examining PERB's Sunset Doctrine in a New Light 481
Richard E. Casagrande
Steven M. Klein
Stephanie S. Baxter

Very Serious Business: Sense and Nonsense Under Section 403(b) of the Internal Revenue Code of 1986 1197
David A. Pratt

ENVIRONMENTAL LAW

Can NAFTA's Environmental Provisions Promote Sustainable Development? 423
Paulette L. Stenzel

ESTABLISHMENT CLAUSE

School Desegregation and the First Amendment 213
David W. Burcham

EVIDENCE

Mixed-Motives, Title VII, and Removing Sexism from Employment: The Reality and the Rhetoric 1
Robert Brookins

FIRST AMENDMENT

School Desegregation and the First Amendment 213
David W. Burcham

FOREIGN RELATIONS LAW

Can NAFTA's Environmental Provisions Promote Sustainable Development? 423
Paulette L. Stenzel

FORUM NON CONVEINS

American Dredging Co. v. Miller: Clouding the Waters of Maritime Litigation 1519
Thomas R. Anderson

FOURTH AMENDMENT

Automated Fingerprint Identification Systems: Issues and Options Surrounding Their Use to Prevent Welfare Fraud... 399
Jennifer K. Constance

Combatting the Drunk Driver Menace: Conditioning the Use of Public Highways on Consent to Sobriety Checkpoint Seizures—The Constitutionality of a Model Consent Seizure Statute 601
Eustace T. Francis

GOVERNMENT LAW

Public Sector Bargaining in New York: Examining PERB's Sunset Doctrine in a New Light 481
Richard E. Casagrande
Steven M. Klein
Stephanie S. Baxter

"Fair Rents" or "Forced Subsidies" Under Rent Regulation: Finding a Regulatory Taking Where Legal Fictions Collide 1293
Timothy L. Collins

Article 18 of New York's General Municipal Law: The State Conflicts of Interest Law For Municipal Employees 1321
Mark Davies

HEALTH CARE LAW

Feasibility of Universally Testing Newborns for Hearing Loss 767
Rebecca A. Slezak

INTELLECTUAL PROPERTY

Tapping to the Beat of a Digital Drummer: Fine Tuning U.S. Copyright Law for Music Distribution on the Internet 789
Kenneth D. Suzan

INTERNATIONAL LAW

Can NAFTA's Environmental Provisions Promote Sustainable Development? 423
Paulette L. Stenzel

The Fortification of an Emergency Regime 1353
Fionnuala Ni Aolain

Transnational Litigation and Personal Jurisdiction Over Foreign Defendants 1389
Sean K. Hornbeck

JURISDICTION

Libel in Cyberspace: A Framework for Addressing Liability and Jurisdictional Issues in this New Frontier 1083
Cynthia L. Counts
C. Amanda Martin

Transnational Litigation and Personal Jurisdiction Over Foreign Defendants 1389
Sean K. Hornbeck

JOINT TENANCY

Real Property Actions and Proceedings Law Section 541—The Mind-Buster Busted 1485
Jason J. Legg

JURISPRUDENCE

Race, Unbridled Discretion, and the State Constitutional Validity of New York's Death Penalty Statute—Two Questions 1545
Stewart F. Hancock, Jr.
Annelle McCullough
Alycia A. Farley

On the Dominant Ideology of the Louisiana Constitution 1579
James T. McHugh

Larry Succeeds Where Michael Failed: Texas Courts Recognize Parental Rights Claims Denied by the United States Supreme Court 1621
Wolfgang Hirczy

Ninth Amendment and State Constitutional Rights 1659
Gregory Allen

Salus Populi Suprema Lex Esto: Gambling, Taxes, the Court, and Citizen Amendments in Missouri 1675
Paul E. Parker

The Restriction of Abortion Protesters in Florida 1685
Timothy O. Lenz

The California Supreme Court Turnabout on Capital Punishment 1693
John H. Culver

The Road Not Taken: Judicial Federalism, School Athletes, and Drugs 1699
Stephen L. Wasby

The Never-So-New Judicial Federalism 1711
Cynthia L. Cates
Wayne V. McIntosh

The Dominance of Federal Law ... 1713
Michael Esler

Clueless in Atlanta: The Georgia Supreme Court in *Franklin v. Hill* 1715
Susan P. Fino

People v. Brisendine 1721
Peter J. Galie

My Aching Heart 1723
James A. Gardner

The Short-Lived Burial of Miranda 1725
Ken Gormley

A Tale of Two Opinions 1731
Joseph R. Grodin

State Constitutional Chutzpah 1733
Barry Latzer

A Rescue From the Jaws of the Crocodile: The Post-Certiorari Plain Statement Footnote 1737
Neil Colman McCabe

State Constitutionalism Comes of Age in Oregon 1741
David Schuman

A Decade of *Washington v. Gunwall*: Is it Still "All Sail and No Anchor?" 1743
Charles H. Sheldon

North Carolina v. Robert Lee Carter: Good Faith Exceptions and New Judicial Federalism in North Carolina 1747
Ruth Ann Strickland
Ronald Stidham

Bowers v. Hardwick Revisited 1751
Susette M. Talarico

Robinson v. Cahill and the New Judicial Federalism 1753
G. Alan Tarr

The State, Homosexual Practices, and Moral Choices 1757
Sharon G. Whitney

Judith S. Kaye: Progressive Decisionmaking Rooted in the Common Law 1763
Marcia B. Smith

Richard D. Simons: Judicial Intolerance of Official Misconduct 1781
Jennifer M. Palmer

Vito J. Titone: Stalwart or Curmudgeon? 1803
John D. Powell

Joseph W. Bellacosa: Cardozo's Knight-Errant? 1827
Timothy B. Lennon

George Bundy Smith: A Reliability Based Criminal Jurisprudence .. 1853
Charles J. Scibetta, Jr.

Howard A. Levine: Paladin of the State 1879
Jason J. Legg

Carmen Beauchamp Ciparick: The Court of Appeals' Voice of Compassion 1913
John M. Bagyi

Epilogue: The New York Court of Appeals—Independent and Accountable 1935
Luke Bierman

LABOR LAW

Mixed-Motives, Title VII, and Removing Sexism from Employment: The Reality and the Rhetoric 1
Robert Brookins

Public Sector Bargaining in New York: Examining PERB's Sunset Doctrine in a New Light 481
Richard E. Casagrande
Steven M. Klein
Stephanie S. Baxter

LAW AND MEDICINE

Feasibility of Universally Testing Newborns for Hearing Loss 767
Rebecca A. Slezak

LEGAL HISTORY

Between-The-Wars Social Thought: Karl Llewellyn, Legal Realism, and the Uniform Commercial Code in Context 325
Allen R. Kamp

MUNICIPAL LAW

Article 18 of New York's General Municipal Law: The State Conflicts of Interest Law For Municipal Employees 1321
Mark Davies

NEGOTIATING

Strategic Negotiation in the Greater Chinese Economic Area: A New American Perspective.... 1035
Jeffrey C.Y. Li

PROFESSIONAL ETHICS

Article 18 of New York's General Municipal Law: The State Conflicts of Interest Law For Municipal Employees 1321
Mark Davies

PUBLICITY

Fluency of the Flesh: Perils of an Expanding Right of Publicity.... 741
Sudakshina Sen

REAL PROPERTY

Real Property Actions and Proceedings Law Section 541—The Mind-Buster Busted 1485
Jason J. Legg

RELIGIOUS LIBERTIES

School Desegregation and the First Amendment 213
David W. Burcham

SECURITIES REGULATION

Misguided Statutory Construction to Cover the Corporate Universe: The Misappropriation Theory of Section 10(b) 139
Michael P. Kenny
Teresa D. Thebaut

STATE CONSTITUTIONAL LAW

Race, Unbridled Discretion, and the State Constitutional Validity of

New York's Death Penalty Statute—Two Questions 1545
Stewart F. Hancock, Jr.
Annelle McCullough
Alycia A. Farley

On the Dominant Ideology of the Louisiana Constitution 1579
James T. McHugh

Larry Succeeds Where Michael Failed: Texas Courts Recognize Parental Rights Claims Denied by the United States Supreme Court 1621
Wolfgang Hirczy

Ninth Amendment and State Constitutional Rights 1659
Gregory Allen

Salus Populi Suprema Lex Esto: Gambling, Taxes, the Court, and Citizen Amendments in Missouri 1675
Paul E. Parker

The Restriction of Abortion Protesters in Florida 1685
Timothy O. Lenz

The California Supreme Court Turnabout on Capital Punishment 1693
John H. Culver

The Road Not Taken: Judicial Federalism, School Athletes, and Drugs 1699
Stephen L. Wasby

The Never-So-New Judicial Federalism 1711
Cynthia L. Cates
Wayne V. McIntosh

The Dominance of Federal Law ... 1713
Michael Esler

Clueless in Atlanta: The Georgia Supreme Court in *Franklin v. Hill* 1715
Susan P. Fino

People v. Brisendine 1721
Peter J. Galie

My Aching Heart 1723
James A. Gardner

The Short-Lived Burial of Miranda 1725
Ken Gormley

A Tale of Two Opinions 1731
Joseph R. Grodin

State Constitutional Chutzpah 1733
Barry Latzer

A Rescue From the Jaws of the Crocodile: The Post-Certiorari Plain Statement Footnote 1737
Neil Colman McCabe

State Constitutionalism Comes of Age in Oregon 1741
David Schuman

A Decade of *Washington v. Gunwall*: Is it Still "All Sail and No Anchor?" 1743
Charles H. Sheldon

State of North Carolina v. Robert Lee Carter: Good Faith Exceptions and New Judicial Federalism in North Carolina ... 1747
Ruth Ann Strickland
Ronald Stidham

Bowers v. Hardwick Revisited 1751
Susette M. Talarico

Robinson v. Cahill and the New Judicial Federalism 1753
G. Alan Tarr

The State, Homosexual Practices, and Moral Choices 1757
Sharon G. Whitney

Judith S. Kaye: Progressive Decisionmaking Rooted in the Common Law 1763
Marcia B. Smith

Richard D. Simons: Judicial Intolerance of Official Misconduct 1781
Jennifer M. Palmer

Vito J. Titone: Stalwart or Curmudgeon? 1803
John D. Powell

Joseph W. Bellacosa: Cardozo's Knight-Errant? 1827
Timothy B. Lennon

George Bundy Smith: A Reliability Based Criminal Jurisprudence .. 1853
Charles J. Scibetta, Jr.

Howard A. Levine: Paladin of the State 1879
Jason J. Legg

Carmen Beauchamp Ciparick: The Court of Appeals' Voice of Compassion 1913
John M. Bagyi

Epilogue: The New York Court of Appeals—Independent and Accountable 1935
Luke Bierman

STATE AND LOCAL GOVERNMENT

Article 18 of New York's General Municipal Law: The State Conflicts of Interest Law For Municipal Employees 1321
Mark Davies

TAKINGS

"Fair Rents" or "Forced Subsidies" Under Rent Regulation: Finding a Regulatory Taking Where Legal Fictions Collide 1293
Timothy L. Collins

TAX LAW

Very Serious Business: Sense and Nonsense Under Section 403(b) of the Internal Revenue Code of 1986 1197
David A. Pratt

Finishing What *Quill* Started: The Transactional Nexus Test for State Use Tax Collection 1449
Anna M. Hoti

TORTS

Knowing Silence of Nonentrepreneurial Information Is Not Sporting 511
Susan Rogers Finneran

Plaintiff Bias in the CPLR 50-A/50-B Statutes 695
James Lambrinos
Oskar R. Harmon

Fluency of the Flesh: Perils of an Expanding Right of Publicity 741
Sudakshina Sen

UNIFORM COMMERCIAL CODE

Between-The-Wars Social Thought: Karl Llewellyn, Legal Realism, and the Uniform Commercial Code in Context 325
Allen R. Kamp